In the Supreme Court of the United States.

October Term, 1922

No. 77

DHARANDAS TULSIDAS, et al., *Petitioners,*

vs.

THE INSULAR COLLECTOR OF CUSTOMS, *Respondent.*

On Writ of Certiorari to the Supreme Court of the Philippine Islands

BRIEF FOR THE RESPONDENT

STATEMENT OF THE CASE

This case comes here on certiorari to the Supreme Court of the Philippine Islands, which reversed the judgment of the court of First Instance of the City of Manila granting a writ of *habeas corpus.*

Counsel for the petitioners having informed us that he stands upon his brief heretofore filed in support of the petition for the writ, we proceed without further delay to present our views upon the questions therein raised and discussed.

STATEMENT OF FACTS

While we take no exception to the history of the proceedings in the tribunals below, we do not accept the statement of facts as given by counsel in part two of the petition, pages 5 and 6, or the "restated and summarized" material facts appearing on page eleven of his brief. As we intend to urge that there was no abuse of the power and discretion conferred upon the administrative authorities in the Islands in the disposition of this case, it is necessary to set forth the substance of the testimony of each one of the petitioners, no other witnesses having testified in the proceedings.

Dharandas Tulsidas, after being duly sworn, testified before the Board of Special Inquiry on October 1, 1919, substantially as follows :

> My name is Dharandas Tulsidas, I am 19 years of age, occupation a merchant, and a British Indian subject. My father and mother are of the Indo race and I came from Hydarbadsen. I have no business in India and do not have any business of my own in the Philippine Islands. My passport was given to me by the British Government and I told the British officials that I was a salesman. There is no difference in India between a salesman and a merchant, as each has a business of his own. I am coming to the Philippines as a partner of Wasumul and Asumul store. I will get a part of the profits and my work will be that of a salesman and not a manager. This is my first trip to the Philippines and the Company (Wasumul and Asumul, hereafter called the Bengal Bazaar) paid for my transportation and other expenses. I have been connected with this company, being a partner in India since 1915. "Q. How long have you been connected with this firm in Manila? A. From first of January this year, 1919." The partnership agreement says that it takes effect January 1, 1919. This agreement which was executed in Hong Kong September 19, 1919, shows that I am connected with the Company. I have nothing more to say about my claim to enter the Islands.
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> NOTE.—This witness presented a passport issued by the Commissioner in Siend, dated April 12, 1919, and shows his occupation to be that of a salesman. (Rec. pp. 5–7.)

Naraindas Lekhraj, after being duly sworn, testified before the same Board on September 30, 1919, substantially as follows:

> My name is Naraindas Lekhraj and I am 45 years of age, occupation a merchant. I was born in Hydrobal of Indo parents. I have lived in the Philip-

pine Islands 19 or 20 years, having left here in December 1915, since which time I have resided in India. I have a business in Manila, being a partner in the Bengal Bazaar. I have invested no money in this establishment and have no money interest in it. I am now, and have been since 1909, an industrial partner in this store. Yes, I mean to say that I could continue to be such an industrial partner during my absence in India. The meaning of an industrial partner is one who has no capital invested in the firm. My trip to India was only a rest and I am returning to Manila to be one of the managers of the store, taking over the place of Bochan, who is going back to India. The owners of the store are the heirs of Wasumul and Asumul. Topandas Wasumul, having a power of attorney of the other heirs, signed the articles of agreement in Hong Kong. My only business interest is in Manila. When I applied for a passport the British Government did not ask me whether I had a business in Hederabadsen, but did ask me if I had a business in Manila. I am sure of this. I have nothing more to say about my case.

NOTE.—This witness presented an agreement made at Hong Kong on September 19, 1919, and acknowledged before the American Consul there. He also presented a passport issued at Manila by the Acting British Consul General on December 3, 1915. (Rec. pp. 10–12.)

Allumal Hakumal Sulchrain, after being duly sworn, testified before the same Board on September 30, 1919, substantially as follows:

My name is Allumal Hakumal Sulchrain, 27 years of age, occupation a silk merchant here in the Philippine Islands. My business is located on the Escolta, Manila, which is the Bengal Bazaar. I have no business in India. I have lived in the Philippine Islands for about three years, returning to India about 16 months ago. I became an industrial partner in the Bengal Bazaar in 1916. I get no salary. The owners of the Bazaar are the heirs of Wasumul and

Asumul, being two sons and three cousins, five in all. There were eleven persons in the agreement signed in Hong Kong on September 19, 1919. I will be a salesman and also a manager in the store in Manila. The present manager is Bochan but he is going home and I will become a manager. "Q. But the present manager is still in Manila therefore two managers now?" "A. We are three managers." "Q. How many managers now in Manila?" "A. Four. We are five here (managers) and three outside of the Philippine Islands. Five (managers) are here and three in Hong Kong." The partners' agreement made in Hong Kong shows that I am a partner in the store. The British officials did not ask me if I had a business in India, but did ask me if I had a business in the Philippines. I have nothing more to say.

NOTE.—This witness presented a passport issued by the Commissioner in Siend, dated March 20, 1919. (Rec. pp. 12–14.)

The first paragraph of the "Partnership Agreement," executed in Hong Kong on September 19, 1919, shows that the parties of the first part were "the members of the existing firm of Wassiamall Assomall & Co." capitalist partners, and the parties of the second part were the three petitioners and four other persons "now residing at Hong Kong, to be known as industrial partners." It further appears in the instrument, that the "said parties have agreed, and by these presents do agree, *to associate* themselves as co-partners for the purpose of carrying on the business" in the Philippine Islands; that this contract shall relate to this particular store and business only; that the "direction, control and management of this partnership is vested solely and exclusively in the parties of the first part," with power to appoint a manager or managers from the industrial partners when deemed necessary; that the "existence of this co-partnership shall relate back to the 1st day of January, 1919, from which date

the books thereof have been kept, and shall continue to exist until the first day of January, 1921, * * *"; and that the "industrial partners agree that other and further industrial partners may be admitted to the firm * * *." (Rec. pp. 15–19).

The Board of Special Inquiry held that Tulsidas was not a merchant and therefore had no right to enter the Philippine Islands. Among other things, the Board said: "His (Tulsidas') passport No. 902 issued by the Commissioner in Siend, dated at Karachi, April 12, 1919, shows that he is a salesman. In his declaration duly acknowledged before the American consul at Madras, India, he states that his employer is Wassiamull Assomull & Co." (Rec. p. 7).

In holding that Naraindas Lekhraj and Allumal Hakumal Sukhrain are not merchants and are therefore not entitled to enter the Philippine Islands, the Board of Special Inquiry said, among other things, that: "It appears that they do not have a business of their own. They claim to be partners of Wassiamull Assomull & Co., but in reality they are salesmen in that store. They claim to be industrial partners of Wassiamull Assomull & Co., but industrial partners are not merchants within the meaning of the Immigration Law" (Rec. p. 14).

On administrative appeal the Insular Collector of Customs affirmed the decisions of the Board of Special Inquiry, after considering all the facts and circumstances and after being fully advised in the premises. In thus affirming the decisions the Collector rested his judgment or action upon the ground that the petitioners "are natives of India and fail to show that they belong to any of the exempt classes under the provisions of section 3 of the Immigration Act of February 5, 1917, * * *" (Rec. p. 3).

The Judge of the Court of First Instance, in granting the writ of *habeas corpus* and ordering the petitioners liberated,

went no further into the case than to decide, after assuming that the petitioners were in fact industrial partners of the co-partnership of Wassiamall Assomall & Co., that such industrial partners are merchants within the meaning of the Immigration Act of February 5, 1917 (Rec. p. 21).

The Insular Supreme Court reversed the judgment of the Court of First Instance and affirmed the action of the customs authorities. While it is true that this high court stated that "In the absence of the section-six certificate, the Department of Customs was not only authorized but obligated, under the law, to refuse the appellees admission into the Philippine Islands," the Court further stated that:

> "In fact, they (the petitioners) expressly admit that they were not merchants in their home province or municipality. Their sole contention was and is that they had entered into a partnership or association by virtue of which they were to become merchants upon their arrival in the Philippine Islands. The law does not contemplate that aliens who claim to belong to an exempted class, or aliens otherwise prohibited from entering the United States, shall be permitted to enter the territory of the United States to become merchants. The fact that they were merchants before they entered the United States is the fact that they must establish" (Rec. pp. 23–24).

ARGUMENT

At the outset, we may simplify the issues by freely admitting that the provisions of section six of the Act of May 6, 1882 (22 Stat. 58), as amended and enlarged by the Act of July 5, 1884 (23 Stat. 115), wherein a mode of proof, known as "Section-Six Certificate," is prescribed, which "shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States," do not apply to "natives," such as the petitioners in the instant case, coming from the "barred zone" described in Section 3 of the Act of February 5, 1917

(39 Stat. 874), for those provisions, being as they are a part of the "Chinese Exclusion Laws," are applicable to Chinese persons, other than laborers, entering the United States for the first time as distinguished from those Chinese persons *returning* to the United States. A careful reading of the whole opinion of the Insular Supreme Court will show that that Court did not rest its judgment upon the failure to present "Section-Six Certificates," for the Court states that the petitioners "expressly admit that they were not merchants in their home province or municipality." *This Court will not reverse a correct judgment simply because some of the reasons given by the Court below are erroneous.*

Finality of Decisions of Board of Special Inquiry

We agree with counsel for petitioners that, under the express provisions of Section 17 of the Act of February 5, 1917, *supra,* the decisions of the Board of Special Inquiry in the instant cases, when affirmed on administrative appeal, are final; and that the courts have no power to interefere unless there was either a denial of a fair hearing, or there was an application of an erroneous rule of law.

While the petitioners do not now claim that they were not given a fair hearing, nevertheless they do insist that the Insular administrative officers "rested their conclusions on a manifestly erroneous construction or misconception of the law applicable to the facts disclosed by the record" (Petition p. 8), in ruling that an industrial partner in a Philippine mercantile co-partnership is not a merchant as that term is used in section 3 of the Immigration Act of February 5, 1917, *supra.* We stand upon the propositions (a) that the administrative decisions entered in these proceedings, when read in the light of all the facts and circumstances, show that the petitioners failed to submit satisfactory proof that they were in fact industrial partners of

the co-partnership of Wassiamall Assomall & Co., and (b) that if it be concluded that the petitioners were industrial partners of that firm, the general result would be the same because such partners are not merchants within the meaning of the Immigration Act of 1917.

Section 3 of the Act of February 5, 1917, *supra*, provides:

> "That the following classes of aliens shall be excluded from admission into the United States: * * *; unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the Continent of Asia, * * *, or who are natives of any country, province, or dependency situate on the Continent of Asia (within certain named meridians of longitude and parallels of latitude) * * *, and no alien now in any way excluded from, or prevented from entering, the United States shall be admitted to the United States. The provisions next foregoing, however, shall not apply to persons of the following status or occupations: Government officers, * * *, merchants, * * *."

These provisions constitute a real and effective Asiatic Exclusion Law. The "natives" of the territory within the designated boundaries are all, when considered as a class, excluded. Only those are entitled to enter who are expressly allowed. No other exceptions can be implied in the enforcement of the law. He who claims to belong to one or the other of the privileged classes must establish his claim to the satisfaction of the "officers of the general government" of the Islands. The burden is *not* upon those immigration authorities to show that any "native" denied the right to enter does not fall within one of the privileged classes, but the burden is upon the "native" to show that he is entitled to enter because of his status or occupation. This much is conceded by counsel, for he states that, as subdivision 3 of Rule 8 of the Immigration Rules of the United

States (Rules of May 1, 1917, 7th Ed. Aug. 1922, p. 53–54) is not in force in the Philippines, neither the courts nor the immigration officers are authorized, in the absence of a rule of that kind, to demand a particular form of evidence in support of an immigrant's claim of exemption, as a member of one of the excepted classes, "provided he submits satisfactory and convincing proof, in some other form, of his status or occupation at the time of his arrival in the Islands" (Petitioners' Brief, p. 23).

The said subdivision 3 of Rule 8 provides that natives of the barred zone who claim exemption on the ground that they are of a status or occupation mentioned in the exceptions "shall present in support of such a claim evidence procured in the place of their domicile showing what their status or occupation has been during at least the two preceding years. Such evidence must be of a convincing nature, and its authenticity shall be attested by the consular officer of the United States located nearest such place of domicile." The petitioners presented no such or like evidence that they were merchants in their domicile of origin, but based their claim of exemption exclusively upon the ground that they were industrial partners of a Philippine mercantile establishment, for they alleged:

> "That the board abused the power and discretion in them vested by holding and declaring that the petitioners being industrial partners in a mercantile concern were not merchants and hence were members of an excluded class, to wit, British Indians" (Rec. p. 2).

The immigration officials were not required to accept the sworn statements of the petitioners as true even though no contrary or impeaching testimony was adduced. Chin Yow *v.* United States, 208 U. S. 8; Tan Puy *v.* The Insular Collector of Customs, 36 Phil. Reps. 900. The record does not support Counsel's contention that those officials accepted

the testimony of the petitioners to the effect that they entered into the so-called partnership agreement in good faith as true, for, as we have pointed out, the Board in the case of Tulsidas made no mention of the claim of the immigrant being an industrial partner in the Manila concern but found that "he has no business of his own in the Philippines" or in India. And in the case of the other two petitioners the Board found that "they do not have a business of their own. They claim to be partners of Wassiamull Assomull & Co., but in reality they are salesmen in that store. They claim to be industrial partners of Wassiamull Assomull & Co., but industrial partners are not merchants within the meaning of the Immigration Law" (Rec. 14). In affirming the decisions of the Board the Insular Collector of Customs did not refer to the claim of the petitioners that they were industrial partners in the Manila store, but rested his decision upon the ground that the Board's finding to the effect that the petitioners failed to show that they belong to any of the exempt classes appears to be reasonable and proper in view of the showing made (Rec. 3).

It will thus be seen that neither the Board nor the Collector believed that the partnership agreement was executed in good faith. This document certainly bears many earmarks indicating that it formed part of a scheme gotten up for the purpose of evading the prohibitory provisions of the Immigration Act. A comparatively small mercantile concern, with five capitalist partners, takes in six industrial partners at one time and provides for taking in an unlimited number of other industrial partners. The activities of the six new industrial partners, three of whom are the petitioners, are limited to the Manila store. They have no interest in any other business of the firm if it has stores elsewhere.

The testimony of the petitioners, read together with the articles of partnership, if accepted as true, disclose at most that it was the intention of all the parties that the petitioners would become industrial partners after they had entered the Philippine Islands. The young man Tulsidas said that he was coming as a partner and "I will get a part of the profits," and the agreement shows that the parties agreed to associate themselves as co-partners. The petitioners could not enter upon the execution of their part of the contract until after their landing in Manila, where the only business affected by the contract is located and where they could render services as industrial partners.

Industrial Partners are not Merchants

If it were true that the evidence of record is sufficient to establish the claim of the petitioners that they were industrial partners of the firm of Wassiamull Assomull and Company, and if it be conceded that this was the finding and understanding of the customs officials, as is urged by counsel, still the petitioners would not be entitled to enter the Islands for the reason that such industrial partners are not merchants as that term is used in section 3 of the Immigration Act of February 5, 1917, *supra*.

While it is true that the provisions of said section 3 quoted above exempts from geographical exclusion a merchant, it contains no definition of the term "merchant." The definition of the term "merchant," as given in section 2 of the Act of November 3, 1893 (28 Stat. 7), is not necessarily applicable, for that Act is designated by its own title as an amendment of the Act of May 5, 1892, which is entitled "An Act to prohibit the coming of Chinese persons into the United States." Looking to the United States we find that on September 14, 1920, the Department of Labor sent out the following:

"To all Commissioners of Immigration and Inspectors in Charge:

This letter will advise officials of the Immigration Service that the Department has defined a merchant, for the purpose of enforcement of the geographical clause of Section 3, as follows:

'A merchant is a person engaged, in good faith, in buying and selling merchandise, at a fixed place of business, which business is conducted in his name and under his own supervision, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor except such as is necessary in the conduct of his business as a merchant.'

* * * * *

For the Commissioner General,
W. J. PETERS,
Special Immigration Inspector."

Turning to the Philippines, we find that the local Legislature of the Islands has defined the term "merchant" for at least two purposes. Act No. 702 (2 Public Laws 363), is entitled "An Act to regulate the registration of Chinese persons in the Philippine Archipelago, and to carry into effect and enforce" certain provisions of the Act of Congress of April 29, 1902. The second paragraph of section 12 thereof reads as follows:

"The term 'merchant' as employed in this Act signifies a person engaged in buying and selling merchandise at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant does not engage in the performance of any manual labor except such as is necessary in the conduct of his business as such merchant. The definition of 'laborer' and 'merchant' set out in this section shall receive the same construction as that given to it by the Federal courts of the United States and the rulings and regulations of the Treasury Department of the United States."

A "merchant," for purposes of internal revenue, "means a person engaged in the sale, barter, or exchange of personal property of whatever character" (Section 1459, Administrative Code, 1917).

Article 1 of the Code of Commerce provides that:

> "The following are merchants for the purposes of this Code: (1) Those who, having legal capacity to trade, customarily devote themselves thereto. (2) Commercial or industrial associations which are formed in accordance with this Code."

While Article 4 of the Code of Commerce provides, as one of the conditions of legal capacity to engage in commerce, that the person must have reached the age of twenty-one years, Article 15 permits foreigners to engage in commerce in the Islands subject to the laws of their own country in so far as their capacity to transact business is concerned. Article 17 provides that registration in the mercantile registry "shall be optional for private merchants and compulsory for associations established in accordance with this Code * * *." Article 125 sets out the essential requisites which the articles of a general co-partnership must contain. Under Article 138 a legally formed commercial co-partnership may consist of both capitalist and industrial partners.

All agree that the Insular authorities should adopt a definition, as a standard for testing the claim of a native to enter the Islands as a merchant under the exception in the geographical excluding provisions of the Act, which will effectuate the purpose of the statute. That the precise end sought was to exclude, by racial discrimination, labor which would be inimical to the labor interest of the United States and the Insular possessions there can be no doubt. To overcome the difficulty experienced in the administration of the Chinese Exclusion Laws prior to the Act of 1893, *supra*, this Act made it possible for a Chinese person to come

within the term "merchant" only in a *bona fide* way. Section 2 thereof declares that the term "merchant" shall have the meaning therein set forth and none other.

Section 1 of the Act under consideration provides "That this Act shall be enforced in the Philippine Islands by officers of the general government thereof, * * *." Under section 23 those officers are authorized to formulate or adopt such a definition of the term "merchant" as they may deem effective to carry out the intent of Congress. An industrial partner of an ordinary, general mercantile co-partnership created under the Commercial Code in force in the Philippine Islands, is one who contributes his industry only to the concern, and not property. Counsel says that industrial partners are those "who furnish no capital but lend their skill, their time, their experience and their services to the joint undertaking" (Brief 25). While our definition is both inclusive and exclusive, the scope and meaning of the term "industry" is sufficiently delimited for all purposes in so far as the relations among the partners themselves and their dealings with third parties are concerned, but not where, as in the instant cases, the general welfare of the whole people is involved, for the basis of the inquiry then shifts materially, and the fundamental question is: Does this definition meet the requirements of the Immigration Act? The customs authorities, let us say, answered the question in the negative and evidently adopted the definition given in section 12 of Act No. 702, *supra*, or one substantially the same as that. In so doing no error was committed, for the definition of the term "industrial partner" is by far too elusive and difficult of application in the administration of the "Asiatic Exclusion Law," as we shall attempt to show.

A native from the barred zone must pass two tests before he can enter the Philippine Islands. The first is largely

one of personal qualification, imposed for the purpose of protecting the health and morals of the people of the country. The second is one of vocational classification which involves the possession of certain social attributes. Only those "natives" who are placed in the excepted classes by the Act can pass this second test. It was said in Lee Can *v.* United States, 62 Fed. Rep. 914, 917, in respect of the definition of the term "merchant" set forth in section 2 of the Act amending the Act of May 5, 1892, *supra*, that "It is incontestable that it (the amendment) was not directed at merchants any more than prior legislation was, or that it was not intended to regulate their methods of business, except so far as necessary to prevent evasions of the Act. It was directed at laborers,—to prevent them from assuming a false character." The same may be said of the Asiatic Exclusion Law under consideration. It is the duty of the Insular authorities to prevent the "natives" from the barred zone from assuming a false character for the purpose of entering the Islands.

As was said in Westcott *v.* Gilman, 170 Cal. 562, 150 Pac. 777, that a division of the profits amongst employees is not an unusual thing in modern business. "The employees receive a fixed compensation by way of wages or salary, and in addition thereto and as an inducement to more efficient service, are given a certain percentage of the net profits at stated intervals. This, of course, does not create a partnership. * * *. But while thus the element of profit sharing does not alone and of itself establish a partnership, it is an essential element of every partnership, * * *." We do not say that a partnership cannot be created in this country by two or more persons uniting in business, one contributing money and the other labor, the profits being divided between them.

We have not been able to find an authoritative statement touching the history and origin of "industrial partners," as

that term is used in the Spanish Code of Commerce, but the Court states in Compania Maritima *v.* Munoz et al., 9 Phil. Rep. 326, 337, that

> "In fact, in his (Estasen) former treaties, * * * we find nothing which recognizes the existence of these irregular general partnerships, or the exemption from liability to third persons of the industrial partners. He says in his latter works (p. 186) that according to Dr. Benito the irregular general partner originated from the desire of the partnership to associate with itself some old clerk or employee as a reward for his services and the interest which he had shown in the affairs of the partnership, giving him in place of a fixed salary a proportionate part of the profits in the business."

While a bare majority of the court held in Compania Maritima *v.* Munoz et al., *supra,* that industrial partners are liable to third parties for the debts and obligations of the partnership, attention is invited to the strong dissenting opinion of the Chief Justice upon this point wherein he states that during almost half a century no objection has been raised by the professors of law, the press or the bar to the doctrine regarding the exemption of industrial partners.

An industrial partner is, as we have stated, one who contributes his industry only to the concern. He may contribute his labor, time, skill, experience and his services, all at one and the same time; or he may contribute his manual labor only, skilled or unskilled, then he would fall clearly within the term "laborer" although he might be at the same time an industrial partner. The outstanding and distinguishing characteristic between a capitalist partner and an industrial partner is that the latter has no interest in the profits as property, but receives a proportion of the same as a compensation for his services; while the former has a partnership in the business, and not merely a right to share the

profits. In Tom Hong *v.* United States, 193 U. S. 517, 522, the court said:

> "The purpose of the law (the Act of May, 1892, as amended Nov. 3, 1893) is to prevent those who have no real interest in the business from making fraudulent claims to the benefits of the Act as merchants. The interest in the business must be substantial and real and in the name of the person claiming to own it, but the partner's name need not necessarily appear in the firm style when carried on, as is usual among the Chinese, under a company name, which does not include individual names. The main purpose is to require the person to be a *bona fide* merchant, having in his own name and right an interest in a real mercantile business, in which he does only the manual labor necessary to the conduct thereof."

These principles are perfectly applicable to natives from the barred zone who are seeking to enter the Islands on the ground that they are merchants, and especially to the petitioners in the case at bar. The petitioners are given no power as partners in the firm of Wassiamall Assomall and Co. by the so-called partnership agreement, for it is clearly stated in paragraph 3 thereof (Rec. 15) that the "direction, control and management of this partnership is vested solely and exclusively" in the capitalist partners with power to appoint such manager or managers from the industrial partners as they may deem necessary. Hence, the petitioners have no real interest in the firm. They are to receive a proportion of the profits in lieu of salaries for their services. They are at most mere employees or would be employees of the firm. They have no voice in the management of the business. They are to obey orders and to do the kind of work or manual labor which they are directed to do by the capitalist partners. They can never become merchants in any real sense under this contract. They have no rights thereunder which they could enforce except payment for their labor or services in the form of a part of the profits.

As the record fails to affirmatively show that the "Articles of Agreement" have been recorded in the commercial registry the *firm itself is not a merchant* and cannot therefore sue or be sued in its firm name. 5 Ops. Atty. Gen'l. of the P. I. 385, and authorities cited therein.

The right of these petitioners to enter the Philippine Islands is to be determined as of the time they presented themselves at the port of Manila for entry. If they were then only would be merchants they cannot be permitted to enter for the purpose of becoming in fact merchants. This is clear.

Power of this Court to review the judgment or decree under consideration

Section 27 of the Act of August 29, 1916 (39 Stat. 555) provides that the Supreme Court of the United States shall have jurisdiction to review the final judgments and decrees of the Insular Supreme Court in all cases in which the Constitution or any statute or treaty of the United States is involved. The review must be on a writ of certiorari and is limited to cases "which would be subject to review under existing law" (Section 5 of the Act of Sept. 6, 1916; 39 Stat. 727).

If the Immigration Act of February 5, 1917, *supra*, is really and substantially involved in this case, it must be so solely because the construction placed upon the Act by the court below, to the effect that the section-six certificate is the sole evidence permissible to establish the petitioners' right to enter the Islands, defeated the right set up by the petitioners; whereas an opposite construction would have sustained that right. Such a construction could not have defeated the right of the petitioners to enter the Islands for the reason that they had no such right under any kind of proof which they could offer.

We merely call attention to this point but do not press it as a decision on the merits is greatly desired by the Insular officers to guide them in the administration of the Asiatic Exclusion Law.

The judgment of the Insular Supreme Court reversing the judgment of the Court of First Instance and affirming the action of the customs authorities should be affirmed.

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